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Paper No. 6

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MAY 10 2002

In re Application of:	:	
Thomas H. Distefano	:	DECISION TO ACCEPT PAPERS
Application No. 09/628,049	:	AND WITHDRAW THE
Filed: July 27, 2000	:	HOLDING OF ABANDONMENT
Docket No. THESSERA 3.0-102 II DIV	:	

This is a decision on the communication filed, via facsimile transmission, on March 15, 2002. The communication has been treated as a petition to accept papers in place of earlier submitted papers and to withdraw the holding of abandonment in the above-identified application.

The petition is **granted**.

The application was held abandoned for failure to file a proper response to the Office action mailed August 30, 2001. A Notice of Abandonment was mailed on March 12, 2002.

Petitioner asserts that on February 26, 2002, a response including an amendment and a petition for a three month extension of time was timely filed in the above-identified application in accordance with 37 C.F.R. § 1.8. To support this assertion, petitioner has submitted a copy of a response bearing a certificate of mailing under 37 C.F.R. § 1.8(a) having a date of deposit of February 26, 2002, and a copy of a return postcard which properly identifies and acknowledges receipt of the response by the U.S. Patent and Trademark Office (PTO) on March 6, 2002.

A review of the application file record reveals that the above-identified response having been acknowledged as being received in the PTO on March 6, 2002, is not of record in the application file and cannot be located. However, M.P.E.P. § 503 states that "A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the response was timely received in the PTO but lost after receipt thereof.

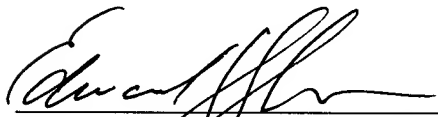
For the above stated reason, the petition is **granted**. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

Decision to Accept Papers and Withdraw the Holding of Abandonment

The copy of the response submitted with the communication on March 15, 2002, is accepted since the response originally submitted was apparently lost.

The application file is being forwarded to the Technology Center 2800 support staff for entry of the response. From there, the application will be forwarded to the examiner for further action.

Inquiries regarding this decision should be directed to Ed Glick at (703) 308-4858.



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